



Reprinted
February 11, 2005

SENATE BILL No. 94

DIGEST OF SB 94 (Updated February 10, 2005 2:52 pm - DI 96)

Citations Affected: IC 34-11; IC 36-8.

Synopsis: Employment absence for volunteer firefighters and members of volunteer emergency medical services associations. Authorizes a members of a volunteer emergency medical association (member) who is responding to a fire or emergency call from absence from political subdivision employment under certain circumstances. Specifies that the absence of a political subdivision employee who is a volunteer firefighter (firefighter) responding to a fire or an emergency call (call) or a member who is responding to a call is not a violation of the ghost employment statute and that the supervisor of the employee who has authorized the absence has not committed ghost employment. Provides that a private employer of a firefighter or member who is responding to a call may not discipline the firefighter or member from absence from employment under certain circumstances. Allows the private employer to determine if the firefighter or member is considered to be an essential employee. Provides that a political subdivision or private employer is not required to pay salary or wages for the time the firefighter or member was absent. Makes a technical correction.

Effective: July 1, 2005.

**Lewis, Young R, Dillon, Antich-Carr,
Craycraft, Young R Michael**

January 4, 2005, read first time and referred to Committee on Pensions and Labor.
January 13, 2005, amended, reported favorably — Do Pass.
January 31, 2005, read second time, ordered engrossed.
February 1, 2005, engrossed.
February 7, 2005, returned to second reading.
February 10, 2005, reread second time, amended, ordered engrossed.

SB 94—LS 6344/DI 96+



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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 94

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-11-2-10.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. An action brought by a**
4 **volunteer:**

5 (1) **firefighter; or**

6 (2) **member of a volunteer emergency medical services**
7 **association connected with a unit of government as set forth**
8 **in IC 16-31-5-1(6);**

9 **against the volunteer's political subdivision employer for being**
10 **disciplined for being absent from employment while responding to**
11 **an emergency must be commenced within one (1) year after the**
12 **date of the disciplinary action, as provided in IC 36-8-12-10.5 (g).**

13 SECTION 2. IC 36-8-12-2 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this
15 chapter:

16 **"Employee" means a person in the service of another person**
17 **under a written or implied contract of hire or apprenticeship.**

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"Employer" means:

- (1) a political subdivision;
- (2) an individual or the legal representative of a deceased individual;
- (3) a firm;
- (4) an association;
- (5) a limited liability company;
- (6) an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5(a); or
- (7) a corporation or its receiver or trustee;

that uses the services of another person for pay.

"Essential employee" means an employee:

- (1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and
- (2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.

"Nominal compensation" means annual compensation of not more than twenty thousand dollars (\$20,000).

"Public servant" has the meaning set forth in IC 35-41-1-24.

"Responsible party" has the meaning set forth in IC 13-11-2-191(d).

"Volunteer fire department" means a department or association organized for the purpose of answering fire alarms, extinguishing fires, and providing other emergency services, the majority of members of which receive no compensation or nominal compensation for their services.

"Volunteer firefighter" means a firefighter:

- (1) who, as a result of a written application, has been elected or appointed to membership in a volunteer fire department;
- (2) who has executed a pledge to faithfully perform, with or without nominal compensation, the work related duties assigned and orders given to the firefighter by the chief of the volunteer fire department or an officer of the volunteer fire department, including orders or duties involving education and training as prescribed by the volunteer fire department or the state; and
- (3) whose name has been entered on a roster of volunteer firefighters that is kept by the volunteer fire department and that has been approved by the proper officers of the unit.

"Volunteer member" means a member of a volunteer emergency medical services association connected with a unit as set for in IC 16-31-5-1 (6).

SECTION 3. IC 36-8-12-10.5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10.5. (a) This section
2 does not apply to an employee of the state subject to IC 4-15-10-7.

3 (b) This section applies to an employee of a political subdivision
4 who:

5 (1) is a volunteer firefighter **or volunteer member**; and

6 (2) has notified the employee's employer in writing that the
7 employee is a volunteer firefighter **or volunteer member**.

8 (c) The political subdivision employer may not discipline an
9 employee:

10 (1) for being absent from employment by reason of responding to
11 a fire or emergency call that was received before the time that the
12 employee was to report to employment; or

13 (2) for leaving the employee's duty station to respond to a fire or
14 an emergency call if the employee has secured authorization from
15 the employee's supervisor to leave the duty station in response to
16 a fire or an emergency call received after the employee has
17 reported to work.

18 (d) The political subdivision employer may require an employee
19 who has been absent from employment as set forth in subsection (c)(1)
20 or (c)(2) to present a written statement from the fire chief or other
21 officer in charge of the volunteer fire department, **or officer in charge**
22 **of the volunteer emergency medical services association**, at the time
23 of the absence indicating that the employee was engaged in emergency
24 firefighting or emergency activity at the time of the absence.

25 **(e) This section does not require a political subdivision to pay**
26 **salary or wages to an employee who has been absent from**
27 **employment within the meaning of subsection (c) for the time away**
28 **from the employee's duty station.**

29 **(f) A public servant who permits or authorizes an employee of**
30 **a political subdivision under the supervision of the public servant**
31 **to be absent from employment or to leave the employee's duty**
32 **station in order to engage in emergency firefighting or emergency**
33 **activity under this section is not considered to have committed a**
34 **violation of IC 35-44-2-4(b).**

35 ~~(e)~~ **(g)** An employee who is disciplined by the employer in violation
36 of subsection (c) may bring a civil action against the employer in the
37 county of employment. In the action, the employee may seek the
38 following:

39 (1) Payment of back wages.

40 (2) Reinstatement to the employee's former position.

41 (3) Fringe benefits wrongly denied or withdrawn.

42 (4) Seniority rights wrongly denied or withdrawn.

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1 An action brought under this subsection must be filed within one (1)
2 year after the date of the disciplinary action.

3 SECTION 4. IC 36-8-12-10.7 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2005]: **Sec. 10.7. (a) This section applies to an**
6 **employee of a private employer who:**

- 7 (1) is a volunteer firefighter or volunteer member; and
8 (2) has notified the employee's employer in writing that the
9 employee is a volunteer firefighter or volunteer member.

10 (b) Except as provided in subsection (c), the employer may not
11 discipline an employee:

- 12 (1) for being absent from employment by reason of
13 responding to a fire or emergency call that was received
14 before the time that the employee was to report to
15 employment; or

- 16 (2) for leaving the employee's duty station to respond to a fire
17 or emergency call if the employee has secured authorization
18 from the employee's supervisor to leave the duty station in
19 response to a fire or an emergency call received after the
20 employee has reported to work.

21 (c) After the employer has received the notice required under
22 subsection (a)(2), the employer may reject the notification from the
23 employee on the grounds that the employee is an essential
24 employee to the employer. If the employer has rejected the
25 notification of the employee:

- 26 (1) subsection (b) does not apply to the employee; and
27 (2) the employee must promptly notify the:
28 (A) fire chief or other officer of the in charge of the
29 volunteer fire department; or
30 (B) the officer in charge of the volunteer emergency
31 medical services association;

32 of the rejection of the notice of the employee who is a volunteer
33 firefighter or a volunteer member.

34 (d) The employer may require an employee who has been absent
35 from employment as set forth in subsection (b) to present a written
36 statement from the fire chief or other officer in charge of the
37 volunteer fire department, or officer in charge of the emergency
38 medical services association, at the time of the absence indicating
39 that the employee was engaged in emergency firefighting or
40 emergency activity at the time of the absence.

41 SECTION 5. IC 36-8-12-10.9 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2005]: **Sec. 10.9. (a) The employer may**
2 **require an employee who will be absent from employment as set**
3 **forth in:**

4 (1) **section 10.5(c)(1); or**

5 (2) **section 10.7(b)(1);**

6 **of this chapter to notify the employer before the scheduled start**
7 **time for the absence from employment to be excused by the**
8 **employer.**

9 (b) **The employer is not required to pay salary or wages to an**
10 **employee who has been absent from employment as set forth in**
11 **section 10.5(c) or 10.7(b) of this chapter for the time away from the**
12 **employee's duty station. The employee may seek remuneration for**
13 **the absence from employment by the use of:**

14 (1) **vacation leave;**

15 (2) **personal time; or**

16 (3) **compensatory time off.**

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SENATE MOTION

Madam President: I move that Senator Young R be added as coauthor of Senate Bill 94.

LEWIS

SENATE MOTION

Madam President: I move that Senator Dillon be added as coauthor of Senate Bill 94.

LEWIS

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 94, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17

Page 2, delete lines 1 through 20.

Page 2, line 24, reset in roman "of a political subdivision".

Page 2, line 29, reset in roman "political subdivision".

Page 2, line 39, reset in roman "political subdivision".

Page 3, line 3, delete "an employer" and insert "**a political subdivision**".

Page 3, line 8, delete "municipal corporation" and insert "**political subdivision**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 94 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Craycraft be added as coauthor of Senate Bill 94.

LEWIS

SENATE MOTION

Madam President: I move that Senators Antich-Carr and Young R Michael be added as coauthors of Senate Bill 94.

LEWIS

SENATE MOTION

Madam President: I move that Senate Bill 94, which is eligible for third reading, be returned to second reading for purposes of amendment.

LEWIS

SENATE MOTION

Madam President: I move that Senate Bill 94 be amended to read as follows:

Page 1, after the enacting clause and before line 1 insert the following:

"SECTION 1. IC 34-11-2-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. An action brought by a volunteer:**

(1) firefighter; or

(2) member of a volunteer emergency medical services association connected with a unit of government as set forth in IC 16-31-5-1(6);

against the volunteer's political subdivision employer for being disciplined for being absent from employment while responding to an emergency must be commenced within one (1) year after the date of the disciplinary action, as provided in IC 36-8-12-10.5 (g).

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SECTION 2. IC 36-8-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter:

"Employee" means a person in the service of another person under a written or implied contract of hire or apprenticeship.

"Employer" means:

- (1) a political subdivision;
- (2) an individual or the legal representative of a deceased individual;
- (3) a firm;
- (4) an association;
- (5) a limited liability company;
- (6) an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5(a); or
- (7) a corporation or its receiver or trustee;

that uses the services of another person for pay.

"Essential employee" means an employee:

- (1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and
- (2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.

"Nominal compensation" means annual compensation of not more than twenty thousand dollars (\$20,000).

"Public servant" has the meaning set forth in IC 35-41-1-24.

"Responsible party" has the meaning set forth in IC 13-11-2-191(d).

"Volunteer fire department" means a department or association organized for the purpose of answering fire alarms, extinguishing fires, and providing other emergency services, the majority of members of which receive no compensation or nominal compensation for their services.

"Volunteer firefighter" means a firefighter:

- (1) who, as a result of a written application, has been elected or appointed to membership in a volunteer fire department;
- (2) who has executed a pledge to faithfully perform, with or without nominal compensation, the work related duties assigned and orders given to the firefighter by the chief of the volunteer fire department or an officer of the volunteer fire department, including orders or duties involving education and training as prescribed by the volunteer fire department or the state; and
- (3) whose name has been entered on a roster of volunteer firefighters that is kept by the volunteer fire department and that

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has been approved by the proper officers of the unit.

"Volunteer member" means a member of a volunteer emergency medical services association connected with a unit as set for in IC 16-31-5-1 (6)."

Page 1, line 1, delete "SECTION 1" and insert "SECTION 3".

Page 1, line 6, delete ";" and insert "**or volunteer member;**"

Page 1, line 8, delete "." and insert "**or volunteer member.**"

Page 2, line 5, after "department" insert "**, or officer in charge of the volunteer emergency medical services association,**"

Page 2, after line 27, insert the following:

"SECTION 4. IC 36-8-12-10.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10.7. (a) This section applies to an employee of a private employer who:**

(1) is a volunteer firefighter or volunteer member; and

(2) has notified the employee's employer in writing that the employee is a volunteer firefighter or volunteer member.

(b) Except as provided in subsection (c), the employer may not discipline an employee:

(1) for being absent from employment by reason of responding to a fire or emergency call that was received before the time that the employee was to report to employment; or

(2) for leaving the employee's duty station to respond to a fire or emergency call if the employee has secured authorization from the employee's supervisor to leave the duty station in response to a fire or an emergency call received after the employee has reported to work.

(c) After the employer has received the notice required under subsection (a)(2), the employer may reject the notification from the employee on the grounds that the employee is an essential employee to the employer. If the employer has rejected the notification of the employee:

(1) subsection (b) does not apply to the employee; and

(2) the employee must promptly notify the:

(A) fire chief or other officer of the in charge of the volunteer fire department; or

(B) the officer in charge of the volunteer emergency medical services association;

of the rejection of the notice of the employee who is a volunteer firefighter or a volunteer member.

(d) The employer may require an employee who has been absent

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from employment as set forth in subsection (b) to present a written statement from the fire chief or other officer in charge of the volunteer fire department, or officer in charge of the emergency medical services association, at the time of the absence indicating that the employee was engaged in emergency firefighting or emergency activity at the time of the absence.

SECTION 5. IC 36-8-12-10.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10.9. (a) The employer may require an employee who will be absent from employment as set forth in:**

- (1) section 10.5(c)(1); or
- (2) section 10.7(b)(1);

of this chapter to notify the employer before the scheduled start time for the absence from employment to be excused by the employer.

(b) The employer is not required to pay salary or wages to an employee who has been absent from employment as set forth in section 10.5(c) or 10.7(b) of this chapter for the time away from the employee's duty station. The employee may seek remuneration for the absence from employment by the use of:

- (1) vacation leave;
- (2) personal time; or
- (3) compensatory time off."

(Reference is to SB 94 as printed January 14, 2005.)

LEWIS

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